place where the work was to be performed. While being thus transported he was killed by a freight train crashing into the rear of the passenger car in which he was riding. *Held*, in an action by the plaintiff to recover for the death of her husband, that when the deceased entered the train for carriage he ceased to be an employee, but, under the contract, became a passenger. Consequently the rule regarding co-employee did not apply and therefore the negligence of the engineer of the freight train in causing the collision did not relieve the company. But see *Baltimore & P. R. Co.* v. *Jones*, 75 U. S. 439, Chase's Cases on Torts, p. 223.

Carriage by Sea—Exceptions in Contract—Negligence—Jettison of Cattle.—Compaina de Navigacion La Flecha v. *Brauer et al.*, 18 Sup. Ct. Rep. 12. In an action in admiralty against a steam navigation company, it appeared that a certain number of cattle were received under a bill of lading stipulating that they were to be "at owner's risk; steamer not to be held liable for accident to or mortality of the animals, from whatever cause arising." During the trip the vessel encountered some rough weather and the master and crew, becoming panic-stricken, drove overboard 126 head of cattle. Such action appearing from the testimony to be unnecessary and due to the incompetency of the crew, *held*, that there could be a recovery. The ordinary contract of a common carrier by sea involves an obligation on his part to use due care and skill in navigating the vessel and in carrying the goods. An exception, in a bill of lading, of perils of the sea, or other specified perils, does not excuse him from that obligation, nor exempt him from one of those perils, to which the negligence of himself or his servants has contributed. *N. J. Steam Nav. Co.*, v. *Merchants B'k*, 6 How. 344. *Transportation Co.* v. *Downer*, 11 Wall. 129. A similar English case is that of *Lenro* v. *Dudgeon*, 17 Law T. (N. S.) 145.

CONTRACTS.

Landlord and Tenant—Coal Leases—Interpretation—Liability of Lessee for Royalty.—Wright et al. v. *Warrior Run Coal Co.*, 38 Atl. Rep. 491 (Pa.). Plaintiff leased to defendants certain coal lands. The lease provided for the payment of a royalty of fifteen cents per ton for all coals mined above the size of chestnut coal, seven and one-half cents for the chestnut, and nothing on the smaller sizes. At the time of the making of the contract there were mined and marketed in that locality seven sizes of coal, including the chestnut. Of the total amount produced, fifteen per cent. was chestnut and nine per cent. smaller, both of which were the incidental product of preparing the other sizes. The demand was greatest for the larger sizes, and very slight for the chestnut. After a few years the demand for the larger sizes diminished, and for the smaller sizes increased to such an extent that it became profitable to produce a greater proportion of smaller coal. In preparing this by breaking up the larger sizes a greater proportion of chestnut and smaller coal was necessarily produced, which also found a profitable market. In an action by the plaintiffs to recover a royalty on the increased production of the chestnut and smaller sizes, the court held that for all chestnut above fifteen per cent, and smaller coal above nine per cent, the average of each produced at the creation of the contract, the lessee should pay a royalty of fifteen cents per ton. Mitchell, J., (dissenting) held the royalty should not be allowed, inasmuch as it was in effect "making a new contract for the parties, in the light of subse-

quent events, in place of the one they made for themselves." In his opinion the lessees could have reduced the whole production of the mines to the smallest size on which the full royalty was paid, and still not be liable for an increased royalty on the incidental product.

Note to Joint Payees—Transfer of Interest—Liability.—Bond v. *Holloway*, 47 N. E. Rep. 838 (Ind.). Defendant, one of two joint payees of a negotiable note, by a writing on the back thereof, assigned over his interest to his co-payee, who in turn sold the note to plaintiff's decedent. *Held*, that the assignment was a mere transfer of assignor's interest, and not an unrestricted and unqualified indorsement. The case appears to be a novel one, and no decisions directly in point are cited. The common law rule that where two persons, not partners, were payees of a promissory note, an indorsement by both was necessary to pass title (2 Pars. Bills and N. 4) has been modified in many jurisdictions to the effect that a part of a written contract may be assigned. *Grover* v. *Ruby*, 24 Ind. 418; 2 Story Eq. Jur., §1044. But such assignment has nowhere been held to be an unqualified indorsement. On the contrary, it has been held in such a case that the co-payee, or his assignee, cannot maintain an action on the assignment as an indorsement. 1 Daniel Neg. Inst. p. 629; *Carrick* v. *Vickey*, 2 Doug. 653, note; *Foster* v. *Hill*, 36 N. H. 526; Chit. Bills 57. In Michigan the negotiable character of a promissory note is destroyed by an indorsement by a payee transferring only his interest to another. *Amiba* v. *Yeomans*, 39 Mich. 171. But see *Vincent* v. *Horlick*1, Camp. 442; *Hailey* v. *Falconer*, 32 Ala. 536; *Lyman* v. *Clark* Mass. 235; *Rich* v. *Lord*, 18 Pick. 325. In the present case the language of the assignment shows only an intention to transfer defendant's interest in the note, and is not an indorsement which charged him as indorser under the law merchant. This fact being patent upon the face of the writing, all subsequent purchasers were chargeable with notice thereof.

Beneficial Associations—Change of Beneficiary.—Fischer v. *Fischer*, 42 S. W. Rep. 448 (Tenn.). A beneficiary in a life insurance policy paid the assessments on the policy for several years. The insured then caused the policy to read in favor of another beneficiary in his place. *Held*, such action was permissible when not in violation of the by-laws of the company. The rights of the holder and beneficiary are to be found in the laws of the company or order, and no interest does or can rest in a beneficiary so as to defeat this right.

DIVORCE.

Decree—Prohibition of Use of Husband's Name—Injunction.—Blanc v. *Blanc*, 47 N. Y. Sup. 694. A decree granting a divorce between husband and wife, which also provided that the defendant should be prohibited from using her husband's name, or any part of it, cannot be attacked collaterally in a suit between the same parties on the ground of want of jurisdiction of the court to decree such a prohibition. Such a decree is valid, and where the wife subsequently uses her husband's name for theatrical purposes, though not in private life, she may be fined for contempt of court, though she used the name under advice of counsel. Where the decree of divorce is still in effect, an injunction restraining the divorced wife from using her former husband's name, will be denied as unnecessary.